

ORIGINAL

Plaintiff, Elaine L. Chao, Secretary of Labor, United States Department of Labor, brings this action to enjoin the defendants, TEXAS QUALITY PAINTING, INC., MITCHELL ZIVIN, an individual, WENDY ZIVIN, an individual and TRINIDAD SANCHEZ, an individual from violating the provisions of Sections 7, 11(c), 15(a)(2) and 15(a)(5) of the Fair Labor Standards Act of 1938, as amended , 29 U.S.C. § 201, et seq., hereinafter referred to as the Act, and to restrain defendants from withholding payment of overtime compensation found by the Court to be due employees under the Act, and an equal amount as liquidated damages due to the employees who are named in the attached Exhibit A.

I.

This court has jurisdiction over this action pursuant to sections 16 and 17 of the Act, 29 U.S.C. §§ 216 and 217, and 28 U.S.C. 1331 and 1345.

II.

1. Defendant, Texas Quality Painting, Inc. is now, and at all times hereinafter mentioned was, a corporation with a place of business and doing business at 19009 Preston Road, No. 215-225, Dallas, Texas, within the jurisdiction of this Court.

Individual jurisdiction

2. Defendant, Mitchell Zivin, has a place of business and doing business in Dallas County at 19009 Preston Road, No. 215-225, Dallas, Texas, within the jurisdiction of this Court, where Mitchell Zivin is, and at all times hereinafter mentioned was, president of the defendant Texas Quality Painting, Inc. and actively manages, supervises and directs the business affairs and operations of the defendant, Texas Quality Painting, Inc. Mitchell Zivin acts and has acted, directly and indirectly, in the interest of the defendant, Texas Quality Painting, Inc. in relation to its employees and is an employer of these employees within the meaning of the Act.

3. Defendant, Wendy Zivin, has a place of business and is doing business in Dallas County at 19009 Preston Road, No. 215-225, Dallas, Texas, within the jurisdiction of this Court, where Wendy Zivin is, and at all times hereinafter mentioned was, an officer and supervisor of the defendant Texas Quality Painting, Inc. and actively manages, supervises and directs the business affairs and operations of the defendant, Texas Quality Painting, Inc. Wendy Zivin acts and has acted, directly and indirectly, in the interest of the defendant, Texas Quality Painting, Inc. in relation to its employees and is an employer of these employees within the meaning of the Act.

4. Defendant, Trinidad Sanchez, has a place of business and is doing business in Dallas County at 19009 Preston Road, No. 215-225, Dallas, Texas, within the jurisdiction of this Court, where Trinidad Sanchez is, and at all times hereinafter mentioned was, the Director of Field Operations of the defendant Texas Quality Painting, Inc. and actively manages, supervises and directs the business affairs and operations of the defendant, Texas Quality Painting, Inc. Trinidad Sanchez acts and has acted, directly and indirectly, in the interest of the defendant, Texas Quality Painting, Inc. in relation to its employees and is an employer of these employees within the meaning of the Act.

III.

At all times hereinafter mentioned, Texas Quality Painting, Inc. has been an enterprise within the meaning of section 3(r) of the Act, 29 U.S.C. Sec. 203(r), in that Texas Quality Painting, Inc. has been, through unified operation or common control, engaged in the performance of related activities for a common business purpose.

IV.

At all times hereinafter mentioned, Texas Quality Painting, Inc. has been an enterprise engaged in commerce or in the production of goods for commerce within the meaning of Section 3(s)(1)(A) of the Act, 29 U.S.C. § 203(s)(1)(A), in that it has employees engaged in commerce or in the production of goods for commerce, or employees handling, selling, or otherwise working on goods or materials that have been moved in or produced for commerce by any person and in that it has an annual gross volume of sales made or business done of not less than \$500,000 (exclusive of excise taxes at the retail level which are separately stated).

V.

During the period since May 1, 2003 defendants have violated and are violating the provisions of Sections 7 and 15(a)(2) of the Act, 29 U.S.C. §§ 207 and 215(a)(2), by employing employees in an enterprise engaged in commerce or in the production of goods for commerce within the meaning of the Act for workweeks longer than forty hours without compensating such employees for their employment in excess of forty hours per week at rates not less than one and one-half times the regular rates at which they were employed.

VI.

As a result of the violations of the Act, overtime compensation has been unlawfully withheld by the defendants from their employees.

VII.

During the period since May 1, 2003 defendants violated the provisions of Sections 11(c) and 15(a)(5) of the Act, 29 U.S.C. §§ 211(c) and 215(a)(5), in that defendants have failed to make, keep and preserve adequate and accurate records of their employees and of the wages, hours, and other conditions and practices of employment maintained by them as prescribed by the regulations of the Administrator issued pursuant to Sections 11(c) and 15(a)(5) of the Act, 29 U.S.C. §§ 211(c) and 215(a)(5), and found in Title 29, Chapter VI, Code of Federal Regulations, Part 516 in that their records failed to show, among other things, the hours worked each day and the total hours worked each week by many of their employees.

VIII.

Defendants have willfully violated the Act. A judgment enjoining the alleged violations and restraining the withholding of overtime compensation found to be due the employees is

specifically authorized by Section 17 of the Act, 29 U.S.C. § 217.

IX.

WHEREFORE, cause having been shown, plaintiff prays for judgment against Texas Quality Painting, Inc., Mitchell Zivin, Wendy Zivin and Trinidad Sanchez as follows:

1. For an Order pursuant to Section 17 of the Act permanently enjoining and restraining defendants, their officers, agents, servants, employees, and those persons in active concert or participation with defendants, from violating sections 7, 11(c), 15(a)(2) and 15(a)(5) of the Act; and
2. For an Order pursuant to Section 16(c) of the Act finding defendants liable for unpaid overtime compensation due to defendants' employees and for the liquidated damages equal in amount to the unpaid compensation found due defendants' employees listed in the attached Exhibit A (additional liquidated damages may be owed to certain employees presently unknown to plaintiff for the period covered by this complaint); or in the event liquidated damages are not awarded;
3. For an Order pursuant to Section 17 enjoining and restraining defendants from withholding payment of unpaid overtime compensation found due defendants' employees and pre-judgment interest computed at the underpayment rate established by the Secretary of Treasury pursuant to 26 U.S.C. § 6621; and
4. For an Order awarding plaintiff the costs of this action; and
5. For an Order granting such other and further relief as may be necessary and appropriate.

Respectfully submitted,

JONATHAN L. SNARE
Acting Solicitor of Labor

WILLIAM E. EVERHEART
Regional Solicitor

MARGARET TERRY CRANFORD
Counsel for Wage and Hour

Address:

U.S. Department of Labor
Office of the Solicitor
525 Griffin Street, suite 501
Dallas, Texas 75202

972.850.3133-telephone
972.850.3101-fax

RSOL No. 06-00312

By:


MARY KATHRYN COBB
Attorney
Bar No. 00791618

Attorneys for Plaintiff

EXHIBIT A

1. ALFARO, ELIAS
2. ALFARO, HOMERO
3. AFLARO, LUIS
4. ALMENDAREZ, ELIO
5. ALVARADO, OSCAR
6. ALVAREZ, BENJAMIN N
7. ALVAREZ, JOSE
8. AMBRIZ, JOSE T
9. AMBRIZ, JOSE A
10. AMBRIZ, RAFAEL
11. ANDRADE, JOSE
12. ARELLANO, OMAR
13. ARRIAGA, ALFREDO
14. ARRIAGA, JOSE
15. ARRIAGA, ROBERTO
16. AVILA, FRANCISCO
17. AVILA, JUAN
18. BALDERAS, ROJELIO
19. BENANCIO, MIGUEL
20. BOUTISTA, YUDIEL
21. BRICENO, MARTIN
22. CALERO, ARLES
23. CAMPUZANO, JUAN
24. CAMPUZANO, MIGUEL
25. CANALES, CARLOS
26. CARDOSO, SANTIAGO
27. CASIMIRO, SIERRA
28. CASTANEDA, ISMAEL
29. CASTRO, RITO
30. CHAVES, ROMAN
31. CHINO, ISAIAS G
32. CONTRERAS, GILBERTO
33. CONTRERAS, RUBEN
34. CRUZ, ADRIAN R.
35. DEGOLLADO, PEDRO
36. DELACRUZ, JOSE
37. DELAROS, IVAN
38. DELAROS, JESUS
39. DESANTIAGO, CANDELARIO
40. DIAZ, JOSE O
41. DIAZ, NELSON H
42. DORANTES, FEDERICO
43. ERAZO, RICHARD
44. ESPINO, WALTER

45. ESPINOZA, ADRAIN
46. EUCEDA, JESUS
47. EUSEDIA, HECTOR
48. FIALOS, ERMAN
49. FLORES, ALEJANDRO C
50. GALAN, JOSE
51. GALARZA, MOISES
52. GALICIA, EDUARDO T
53. GALLO, DIMAS
54. GALO, SANTOS A
55. GALVIN, DANIEL O
56. GAONA, JOREGE 2
57. GARCIA, ARTURO
58. GARCIA, JOSE
59. GARCIA, JUAN
60. GARCIA WILMER
61. GIMINEZ, JOSE
62. GOMEZ, JULIO
63. GONSALES, JOSE L
64. GONZALES, CARLOS
65. GRANADOS, JORGE
66. GUEL, ANDRES
67. GUERRERO, JUAN T
68. GUEVARA, JOSE
69. GUTIERREZ, ALEJANDRO
70. GUTIERREZ, MIGUEL
71. HERIBERTO, ANTONES
72. HERNANDEZ, ALBERTO
73. HERNANDEZ, BERNARDO
74. HERNANDEZ, DANIEL
75. HERNANDEZ, FREDDY
76. HERNANDEZ, GILVERTO
77. HERNANDEZ, JUAN C
78. HERNANDEZ, NICOLAS
79. HERNANDEZ, RANDOLFO
80. HERNANDEZ, RIGOVERTO
81. HERNANDEZ, TOMAS
82. HERNANDEZ, WILMER
83. HERRERA, BENJAMIN
84. HERRERA, SIMON
85. HERREER, UNBERTO
86. LANZA, MELVIN
87. LLAMAS, EDGAR
88. LOPES, MARTIN
89. LOPEZ, ABRAHAM G
90. LOPEZ, JULIO C

91. LOPEZ, LAURO
92. LOPEZ, MELMIN
93. LUNA, WELSON R
94. MALDONADO, ORNATIO
95. MARLON, ENRIQUE
96. MARQUEZ, JOSE
97. MARTINEZ, ALEX
98. MARTINEZ, BASILIO
99. MARTINEZ, EFRAIN
100. MARTINEZ, JUAN
101. MARTINEZ, OMAR
102. MARTINEZ, ROLDAN
103. MARTINEZ, SILVERTRE
104. MARTINEZ, VICTOR
105. MATA, DANIEL
106. MELGOR, HERNAN
107. MENA, ANTONIO
108. MENDIOLA, HUMBERTO
109. MENDOZ, RAMON
110. MENDOZA, ALBERTO
111. MERCAOD, DAVID
112. MERLAN, SALOME
113. MIRAMONTES, JUAN
114. MONREAL, SANTOS
115. MONSIVIAS, DEMETRIO
116. NAJERA, JOSE
117. NAVA, FERNANDO M
118. OLBERA, ROMAN
119. OLVERA, MARTIN
120. ORDONO, ALBERTO
121. ORTIZ, FRANCISCO J
122. OROCIO, ARMANDO
123. OROSCO, ADAN
124. OROSCO, MAUEL
125. OROSIO, LUIS
126. ORTIZ, EFREN
127. ORTIZ, ONECIMO
128. OVIEDO, OSCAR
129. PAZ, SANTOS T
130. PENA, JAVIER F
131. PERALES, JOSE G
132. PEREZ, ANTONIO M
133. PEREZ, CARLOS
134. PEREZ, WILMER
135. PINEDA, SERGIO
136. PONCE, MIGUEL

137. PRESAS, ENRIQUE
138. PRESAS, RIQUEL
139. QUIROZ, JR. JORGE
140. QUIROS, SR. JORGE
141. RAMIREZ, ANGEL
142. RAMIREZ, DAVID
143. RAMIREZ, JOSE
144. RAMIREZ, JOSE 2
145. RAMIREZ, RAYMUNDO
146. RANGEL, CONRODO
147. REYES, ALFREDO
148. REYES, VINCENTE
149. RICO, OSCAR M
150. RIOS, FRANCISCO
151. RIVAS, JAIME
152. RIVERA, ANTONIO 2
153. RIVERA, JOSE
154. RIVERA, MARIO J
155. RODRIGUEZ, ALFONSO
156. RODRIGUEZ, CARLOS
157. RODRIGUEZ, JOSE L
158. RODRIGUEZ, JOSE 1
159. ROJAS, JACOBO
160. ROSAS, DANIEL O
161. ROSENO, SILVA
162. RUIZ, ALFONSO
163. RUIZ, GUILLERMO 2
164. RUIZ, JOSE A
165. SAENZ, OSCAR
166. SALAS, JESUS
167. SALAZAR, JOSE A
168. SALINAS, OSCAR
169. SANCHEZ, HERRERA D
170. SANCHEZ, JESUS S
171. SANCHEZ, JUAN D
172. SANCHEZ, MARIO
173. SANTA, JOSE R
174. SANTOS, LARO
175. SERVIN, ROGELIO
176. SHAGOLLA, AMANCIO
177. SILVA, JOEL
178. TENORIO, JAIME
179. TIRADO, MARCO E
180. TOLIO, VALERA
181. TOPIA, DOMINGO
182. VILLANUEVA, EUSEBRO

183. SALGADO, BRUNO

CIVIL COVER SHEET

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The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

ELAINE L. CHAGS, Secretary of Labor
United States Department of Labor

(b) County of Residence of First Listed

(EXCEPT IN U.S. PLAINTIFF CASES)

ORIGINAL

(c) Attorney's (Firm Name, Address, and Telephone Number)

Mary K. Cobb, Esq.
United States Department of Labor, Office of the Solicitor
525 S. Griffin, Suite 501
Dallas, Texas 75202 (972) 850-3100

DEFENDANTS

TEXAS QUALITY PAINTING INC., MITCHELL ZIVIN, an individual
WENDY ZIVIN, an individual, and TRINIDAD SANCHEZ, an individual

County of Residence of First Listed

Dallas

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT
LAND INVOLVED.

Attorneys (If Known)

8-07CV0548-K

II. BASIS OF JURISDICTION

(Place an "X" in One Box Only)

- X 1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES

(Place an "X" in One Box for Plaintiff and One Box for Defendant)

- (For Diversity Cases Only)
- | | | | | | |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT

(Place an "X" in One Box Only)

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury—Med. Malpractice <input type="checkbox"/> 365 Personal Injury—Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	LABOR <input checked="" type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation 791 Empl. Ret. Inc. Security Act	SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	

V. ORIGIN

(PLACE AN "X" IN ONE BOX ONLY)

- X 1 Original Proceeding
 2 Removed from State Court
 3 Remanded from Appellate Court
 4 Reinstated or Reopened
 5 Transferred from another district (specify)
 6 Multidistrict Litigation
 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

(Cite the U.S. Civil Statute under which you are filing and write brief statement of cause.
Do not cite jurisdictional statutes unless diversity.)

To enjoin the Defendants, Texas Quality Painting Inc., Mitchell Zivin, an individual, Wendy Zivin, an individual, and Trinidad Sanchez, an individual from violating the provisions of Sections 7,11(c),15(a)(2) and 15(a)(5) of the Fair Labor as amended, Standards Act of 1938, 29 U.S.C. § 201, et seq.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION DEMAND \$
 UNDER F.R.C.P. 23

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

3/20/2007

SIGNATURE OF ATTORNEY OF RECORD

Mary K. Cobb